

## **ENFORCEMENT SUB-PANEL DRAFT RULES 7/25/06**

### **E. MORTGAGE BROKERS (Licensing)**

**What personal traits of the applicant, its principals, and its designated broker does the department consider before issuing a mortgage broker license?**

Before issuing a mortgage broker license, the department will consider whether the applicant, its principals, and its designated broker have demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and warrant a belief that the business will be operated honestly, fairly, and efficiently within the scope of the act.

**Why does the department consider financial responsibility, character, and general fitness before issuing a mortgage broker license?**

One of the purposes of the act is to ensure that mortgage brokers and loan originators deal honestly and fairly with the public. Applicants, principals, and designated brokers who have demonstrated their financial responsibility, character, and general fitness to operate their businesses honestly, fairly, and efficiently are more likely to deal honestly and fairly with the public.

**What does the department consider in determining if an applicant, its principals, or its designated broker have demonstrated financial responsibility, character, and general fitness?**

The department will consider whether the applicant, its principals, or its designated broker have experienced financial difficulties, legal difficulties, regulatory difficulties, or other problems in their personal or professional life that suggest questionable judgment or an inability to deal honestly and fairly with the public.

### **L. ADVERTISING**

**What are some of the state and federal regulations mortgage brokers and loan originators must comply with when advertising?**

The following chart contains common advertising violations and the related state and federal laws adopted by the department. This list is intended only as a sample and is not intended to be all-inclusive of all applicable federal statutes and regulations mortgage brokers and loan originators must comply with.

<b>STATE LAW</b>		<b>FEDERAL LAW</b>	
<b>POTENTIAL VIOLATION</b>	<b>Mortgage Broker Practices Act</b>	<b>Other (including Federal Trade Commission Act)</b>	<b>Truth In Lending Act [15 U.S.C § 1601] &amp; Regulation Z</b>
<b>1. Use of an emblem or other government-like name or language</b>	RCW 19.146.0201 (1), (2), (11)	18 U.S.C. § 709 15 U.S.C. § 45(a)(1) 15 U.S.C. § 52	
<b>2. Failure to include or conspicuously disclose APR</b>	RCW 19.146.0201(10), (11) RCW 19.146.0201(1), (2)		12 C.F.R. § 226.24(b) (closed-ended credit) [Reg. Z] 12 C.F.R. § 226.16(b)(2) (open-ended credit) [Reg. Z]
<b>3. Advertising rates not actually available</b>	RCW 19.146.0201(5) & (7), (11) RCW 19.146.0201(1) & (2)	15 U.S.C. § 45(a)(1) 15 U.S.C. § 52(a)	15 U.S.C. § 1662 12 C.F.R. § 226.24(a) (closed-ended credit) [Reg. Z] 12 C.F.R. § 226.16(a) (open-ended credit) [Reg. Z]
<b>4. Failure to disclose source of information regarding a</b>	RCW 19.146.0201 (1), (2), (11)	15 U.S.C. § 45(a)(1) 15 U.S.C. § 52(a)	

consumer's current loan			
5. Suggested or represented an affiliation with an entity that it does not actually represent	RCW 19.146.0201 (1),(2),(11)	18 U.S.C. § 709 15 U.S.C. § 45(a)(1) 15 U.S.C. § 52 (a)	

A licensee is prohibited from advertising with envelopes or stationery that contains an official-looking emblem designed to resemble an official government mailing. What are some examples of emblems or government-like names or language that will violate the state and federal advertising laws?

Some examples include, but are not limited to:

1. An official-looking emblem such as an eagle, the Statue of Liberty, or a crest or seal that resembles one used by any state or federal government agency.
2. Envelopes designed to resemble official government mailings, such as IRS or U.S. Treasury envelopes, or other government mailers.
3. Warnings or notices citing government codes or form numbers not required by the U.S. Postmaster to be shown on the mailing.
4. The use of the term "Official Business," or similar language implying official or government business, without also including the name of the sender.
5. Any suggestion or representation that the solicitor is affiliated with any agency, bank, or other entity that it does not actually represent.

When I am advertising interest rates, the act requires me to conspicuously disclose the annual percentage rate (APR) implied by the rate of interest. What does it mean to "conspicuously" disclose the APR?

The type size of the APR must be the same size or larger than any other rates stated in the advertisement.

**The act prohibits me from advertising an interest rate unless that rate is actually available at the time of the advertisement. How may I establish that an advertised interest rate was "actually available" at the time it was advertised?**

Whenever a specific interest rate is advertised, the mortgage broker must retain a copy of the lender's "rate sheet," and the APR calculation sheet for the advertised interest rate.

**May a mortgage broker or loan originator advertise rates or fees as the "lowest" or "best"?**

No. Because rates described as "lowest," "best," or other similar words cannot be proven to be actually available at the time they are advertised, they are a false or deceptive statement or representation prohibited by RCW 19.146.020(7).

## **O. DIRECTOR AND AGENCY POWERS**

### **Enforcement**

**May the department sanction me for committing violations in another jurisdiction?**

Yes. The department may impose sanctions against you for committing a violation in another jurisdiction. Possible sanctions include those found in RCW 19.146.220.

**What is an administrative enforcement action?**

An administrative enforcement action is a formal action, generally initiated by a statement of charges against persons who allegedly violate the act. Enforcement actions seek various sanctions, including, but not limited to, license revocation, business practice prohibition, or fines; and may include ordering restitution for consumers, or the recovery of the department's investigation costs, or all of the above.

**What other enforcement action may the department pursue against me or my license?**

The department may pursue criminal or civil referrals to the Attorney General, prosecuting attorneys, or federal authorities, and may initiate civil actions in superior court.

**Under what circumstances will the department hold a designated broker, principal, or owner who has supervisory authority responsible for the actions of others that violate the act?**

A designated broker, principal, or owner with supervisory authority is responsible for any conduct violating the act by a licensee, employee, or independent contractor if they:

(1) direct or instruct the conduct that was in violation of the act, or have knowledge of the specific conduct, and approve or allow the conduct; or

(2) know, or by the exercise of reasonable care and inquiry should have known of the conduct in time to prevent it, or minimize the consequences, and did not.

**When conduct violating the act has occurred, what may the department consider when assessing the responsibility of the designated broker, principal, and owner with supervisory authority?**

The department may consider the following in an effort to determine who is responsible when a violation of the act has occurred. The following list is not limiting or exhaustive of the elements the department may consider:

(1) The adequacy of any background and experience investigation conducted prior to hiring or contracting with any person;

(2) The adoption of policies and procedures for:

(a) supervision and training

(b) regularly reviewing work performed

(c) training in the requirements of the act and rules

(d) monitoring continuing education requirements and compliance under the act

(e) acting on reports of alleged misconduct;

(3) Adopting a system of review for implementation and compliance with the policies and procedures;

(4) Providing copies of the act and rules; and

(5) The frequency and completeness of review conducted on work performed by any person subject to the act.

**How often may the department investigate my mortgage broker or loan originator operations?**

The department may investigate your business as often as necessary to carry out the purpose of the act.

**Will the department give me advance notice before requiring me to make my books and records available for its investigation?**

The department is not required to give you advance notice before an investigation. However, the department may provide advance notice before an investigation if doing so would be in the best interests of all parties involved, including the department.

**From whom may the department obtain information in an investigation?**

The department may obtain information from any person whose testimony may be required about the loans, business, or subject matter of an investigation.

**How may the department obtain information during an investigation?**

The department may direct, subpoena, or order a person to submit to a deposition, or produce written information.

**What information may the department obtain during an investigation?**

The department may obtain books, accounts, records, files, and any other documents the department deems relevant to the investigation.

**What businesses may the department investigate?**

The department may investigate the business of any person who is engaged in the business of mortgage brokering, whether the person is a licensee or whether the person acts or claims to act under, or without the authority of, the act.

**May the director hire independent professionals to assist in an investigation, and if so, will I have to pay for those services?**

Yes. The department may hire attorneys, accountants or other professionals as needed to conduct or assist in an investigation. The cost for these services will be assessed in accordance with WAC 208-660-XXX, Investigations.

**Under the act, is it a crime for any person subject to examination or investigation to knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information?**

Yes. Knowingly withholding, abstracting, removing, mutilating, destroying, or secreting books, records, computer records, or other information is a class B felony punishable under RCW 9A.20.021(1)(b).

**When may the department charge a mortgage broker or loan originator an investigation fee?**

The department may charge an investigation fee when it investigates the books and records of any mortgage broker or loan originator subject to the act.

**Are there circumstances, and if so, what are they, when the department investigates a mortgage broker or loan originator but does not charge an investigation fee?**

Yes. The department will not charge an investigation fee in a complaint process if the investigation determines no violation occurred, or when the mortgage broker or loan originator implements a remedy satisfactory to the complainant and the department and no department order has been issued.

**How is the amount of the investigation fee determined?**

The amount of the investigation fee is the number of hours expended by the department related to the investigation multiplied by an hourly rate established by the department. See Section P, Department Fees and Costs.

**What is a temporary cease and desist order issued by the department?**

A temporary cease and desist order is an administrative enforcement action by the department ordering a mortgage broker or loan originator to stop conducting business, or to stop doing some specific act.

**When does the department use temporary cease and desist orders?**

A temporary cease and desist order may be used when the department determines that a mortgage broker or loan originator is violating the act in a manner that is likely to cause substantial injury to the public.

**Do I have the right to have an attorney represent me at an adjudicative hearing and in any superior court proceeding?**

Yes. You may have an attorney represent you at your own expense, or you may represent yourself.

**Who may make a claim against a licensed mortgage broker's surety bond?**

Any person, including a third-party service provider, who has been injured by a violation of the act.

**How may I make a claim against a licensed mortgage broker's surety bond?**

The department's licensing unit can provide you with the name of a licensed mortgage broker's surety bond provider. Contact the bond company and follow its required procedures to make your claim.

**How may I make a claim against a certificate of deposit, an irrevocable letter of credit, or other instrument that the director has permitted to be filed instead of a surety bond?**

File your claim against a certificate of deposit, an irrevocable letter of credit, or other instrument directly with the department, in a form prescribed by the department. After January 1, 2007, the department will only accept surety bonds; any claims arising after January 1, 2007, will be against a bond.

**How long does the bond claim procedure take?**

The time to complete a bond claim may vary among bonding companies. If the claimant is not a borrower, final judgment will not be entered prior to one hundred-eighty days after the claim is filed.

**When must I file a bond claim?**



A bond claim must be filed within one year of the date of the act that causes the claim.

**What happens to my mortgage broker or loan originator license if the Department of Social and Health Services (DSHS) certifies me as out of compliance with a support order under chapter 74.20A.320 RCW?**

(1) The director will immediately suspend your license without the opportunity for a hearing if the department receives notice from the DSHS that you are out of compliance with their support order regulations.

(2) The director will send you a document entitled "Notice of Suspension for Noncompliance with Child Support Order." Your license is suspended from the date of the notice. The suspension of your license remains in effect until the director is notified by DSHS of your compliance with their order. You must not perform any services under the act that require licensing while your license is suspended.

**If the director suspends my license after notice from DSHS that I am not in compliance with a support order, may my license be reinstated?**

(1) The director will reinstate your license when the department has received written notice from DSHS of your compliance, and verified that you meet all licensing requirements under the act.

(2) The department will send you a notice entitled "Notice of Cancellation of Suspension for Noncompliance with Child Support Order." Your license is reinstated from the date of the notice.

**Who may I contact if I have questions about how DSHS determines I am out of compliance with a support order?**

Contact DSHS if you have questions about a DSHS certification of your non-compliance with a support order. Reference their case number when you contact them.

**When may a mortgage broker charge the borrower a fee, commission, or other compensation for services rendered by the mortgage broker in obtaining a loan for the borrower?**

When the borrower obtains a loan from a lender on the terms and conditions agreed upon by the borrower and the mortgage broker, the mortgage broker may charge the borrower a fee, commission, or other compensation for the preparation, negotiation, and brokering of the residential mortgage loan.

**May a mortgage broker charge the borrower a fee, commission, or other type of compensation for services rendered when the mortgage broker does not obtain a loan from a lender on the terms and conditions agreed upon by the borrower and the mortgage broker?**

A mortgage broker may charge a fee, and may bring a suit for collection of the fee, not to exceed three hundred dollars, for services rendered, for the preparation of documents, or for the transfer of documents in the borrower's file which were prepared for, or paid for by, the borrower if:

(1) The borrower fails to close on a loan through no fault of the mortgage broker;

(2) The fee is not otherwise prohibited by the Truth in Lending Act; and

(3) The mortgage broker has obtained a written commitment from a lender on the same terms and conditions agreed upon by the borrower and the mortgage broker.

**May a loan originator charge the borrower a fee, commission, or other compensation for preparing, negotiating, or brokering a loan for the borrower?**

No. A loan originator may not charge the borrower a fee, commission, or compensation of any kind in connection with the preparation, negotiation, and brokering of a residential mortgage loan.

**May a loan originator bring a lawsuit against a borrower for the collection of compensation?**

No. Only licensed mortgage brokers, or exempt mortgage brokers, may bring collection actions against borrowers to collect compensation.

**What is a "written commitment from a lender on the same terms and conditions agreed upon by the borrower**

**and mortgage broker"?**

The written commitment is a written agreement or contract between the mortgage broker and lender containing mutually acceptable loan provisions and terms. The lender must be one with whom the mortgage broker maintains a written correspondent or loan brokerage agreement as required by RCW [19.146.040](#)(2). The mutually acceptable loan provisions and terms must be the same terms and conditions set forth in the most recent good faith estimate signed by both the borrower and the mortgage broker.

**Pending:**

**"What are my rights?"**

**"What is a directive or subpoena?"**

**"What is an investigation?"**

**"What does it mean to be found in violation of the act and rules?"**